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22 MARKEL INSURANCE COMPANY

23 UNITED STATES DISTRICT COURT
24 NORTHERN DISTRICT OF CALIFORNIA

25 CITI APARTMENTS, INC.; PRIME
26 APARTMENT PROPERTIES, LLC; PRIME
27 PROPERTIES I, LLC; RMSV BAY CITI
28 PROPERTIES I DE, LLC; RMSV BAY CITI
PROPERTIES I, LLC; 124 MASON, DE,
LLC; TROPHY PROPERTIES, VI, LLC;
LRL CITI PROPERTIES I DE, LLC;
FRANK LEMBI; WALTER LEMBI;
ANDREW J. HAWKINS,

No. C 06 05752 CW
No. C 06-7086 CW

**STIPULATION TO DISMISS THE
FIRST AMENDED COMPLAINT AND
REQUEST FOR ENTRY OF
JUDGMENT ON THE JUNE 11, 2007
ORDER RE THE MOTIONS FOR
SUMMARY JUDGMENT; ORDER**

29 Plaintiffs,

Complaint Filed: August 21, 2006

30 v.
31 MARKEL INSURANCE COMPANY; and
32 DOES 1 through 100, inclusive,
33 Defendants.

CMC Date: October 23, 2007
Time: 2:00 P.M.
Dept.: Courtroom 2
Judge: Hon. Claudia Wilken

34 CITI APARTMENTS, INC., et al.

35 Plaintiffs,

36 v.

1 MARKEL INSURANCE COMPANY; and
2 DOES 1 through 100 inclusive,

3 Defendants.

4

5 Plaintiffs CITI APARTMENTS, INC.; PRIME APARTMENT PROPERTIES, LLC;
6 PRIME APARTMENT PROPERTIES I, LLC; RMSV BAY CITI PROPERTIES I DE, LLC;
7 RMSV BAY CITI PROPERTIES I, LLC; 124 MASON, DE, LLC; TROPHY PROPERTIES,
8 VI, LLC; LRL CITI PROPERTIES I DE, LLC; TROPHY PROPERTIES IV, DE LLC;
9 TROPHY PROPERTIES V, LLC; NOB HILL TOWERS DE LLC; BAY CITI PROPERTIES,
10 DE LLC; CITI PROPERTIES DE,LLC; LSL PROPERTY HOLDINGS, LLC; TROPHY
11 PROPERTIES LLC; ALAMO CITY PROPERTIES, DE, LLC; SKYLINE REALTY, INC.;
12 FRANK LEMBI; WALTER LEMBI; and ANDREW J. HAWKINS (“Plaintiffs”) and Defendant
13 MARKEL INSURANCE COMPANY (“Markel”), by and through their respective attorneys of
14 record, hereby stipulate to the dismissal of Plaintiffs’ First Amended Complaint, which is the
15 only outstanding pleading, and request that the Court dismiss that complaint and enter judgment
16 on its June 11, 2007, Order granting Markel’s Motion for Summary Judgment on the initial
17 complaint. Markel is represented by Susan E. Firtch of Burnham | Brown. Plaintiffs are
18 represented by Guy O. Kornblum of Kornblum & Associates.

19 The request and stipulation are based on the following grounds:

- 20 1. This was an insurance coverage dispute concerning the right to independent
21 counsel (sometimes referred to as “Cumis” counsel) under California law.
- 22 2. The parties filed cross-motions for summary judgment/adjudication concerning
23 the right to independent counsel. By Order dated June 11, 2007, this Court granted Markel’s
24 motion for summary judgment, denied Plaintiffs’ cross-motion, and granted Plaintiffs’ motion
25 for leave to file a first amended complaint to assert new claims.
- 26 3. Plaintiffs filed their first amended complaint. Markel filed a motion to dismiss
27 pursuant to F.R.C.P. 12(b)(1) and 12(b)(6). At that time, the motion hearing/CMC was set for
28 August 23, 2007.

1 4. Prior to the hearing date, the parties participated in mediation with Judge Rebecca
2 Westerfield (ret.) on July 26, 2007, and were able to reach an agreement in principle.
3 Thereafter, pursuant to Stipulation and Order of this Court, the parties continued the hearing and
4 CMC date until the final written settlement agreement could be executed.

5 5. The written settlement agreement has now been executed, and Markel's motion to
6 dismiss has been taken off calendar.

7 6. Pursuant to the settlement agreement, all that remains to be done in this case is:

8 a. The First Amended Complaint needs to be dismissed without prejudice;
9 and

10 b. Judgment needs to be entered on the Court's June 11, 2007, Order
11 granting Markel's motion for summary judgment and denying Plaintiffs'
12 cross motion.

13 Therefore, the Parties hereby stipulate that the First Amended Complaint be dismissed
14 and respectfully request that the Court dismiss that Complaint and enter Judgment on its June 11
15 Order.

16 ||| DATED: October 10, 2007

/s/ Susan E. Firtch
SUSAN E. FIRTCH
BURNHAM BROWN
Attorneys for Defendant
MARKEL INSURANCE COMPANY

DATED: October 10, 2007

/s/ Guy Kornblum
GUY KORNBLUM
GUY KORNBLUM & ASSOCIATES
Attorneys for Plaintiffs
CITI APARTMENTS, INC.; PRIME
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TROPHY PROPERTIES, VI, LLC; LRL CITI
PROPERTIES I DE, LLC; FRANK LEMBI;
WALTER LEMBI; ANDREW J. HAWKINS

ORDER

The Court hereby orders that:

1. Plaintiffs' First Amended Complaint is dismissed without prejudice, pursuant to the parties' agreement.

2. The Court's June 11, 2007, Order Granting Markel's Motion for Summary Judgment and Denying Plaintiffs' Cross-Motion is a final order, and judgment shall be entered on that Order.

DATED: 10/25/07

Chadie Witt

Hon. Claudia Wilken

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